

Members

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Steve Shockley



CODE REVISION COMMISSION

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Authority: IC 2-5-1.1-10

MEETING MINUTES

Meeting Date: September 06, 2000
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington St.,
Meeting City: Indianapolis, Indiana
Meeting Number: 1

Members Present: Rep. Robert Kuzman, Chairman; Sen. Luke Kenley, Chairman-Elect; Sen. Sam Smith, Jr.; Rep. Robert Behning; Mr. J.D. Lux, representing Attorney General Karen Freeman-Wilson; Mr. Todd Rokita, representing Secretary of State Sue Ann Gilroy; Mr. Dave Remondini, representing Chief Justice Randall T. Shepard, Indiana Supreme Court; Chief Judge John T. Sharpnack, Indiana Court of Appeals; Ms. Cynthia Baker, Director, Law & State Government, IU School of Law-Indianapolis; Mr. Steve Shockley, Attorney at Law.

Members Absent: Sen. Anita Bowser; Sen. Sue Landske; Rep. Ralph Foley; Rep. John Frenz; Mr. Fred Biesecker, Counsel to the Governor.

Staff present: Mr. John Stieff, Director, Office of Code Revision; Mr. Craig Mortell, Deputy Director, Office of Code Revision; Ms. Rebecca Mortell, Deputy Director, Office of Code Revision; Mr. Dick Sheets, Editorial Assistant, Office of Code Revision.

I. CALL TO ORDER

The meeting was called to order at 10:10 a.m.

II. ELECTION OF CHAIRMAN

Senator Kenley was nominated to be the new chairman. The motion was seconded and adopted by consent.

III. INTRODUCTORY REMARKS REGARDING WORK OF THE CODE REVISION

COMMISSION

After the members of the Commission introduced themselves, Senator Kenley explained that in the past, the work of the Code Revision Commission has focused on two areas: (1) review of the technical corrections bill; and (2) review of drafts recodifying particular titles of the Indiana Code. Senator Kenley commented that he had received numerous comments from members of the Bar that the recodification of certain titles of the Indiana Code in recent years has resulted in a tremendous upgrade in the quality of the Indiana Code. Senator Kenley inquired why the Legislative Council had discontinued the recodification projects. Mr. Stieff responded that he thought the recodification projects had been discontinued because of the expense involved. He explained that the projects involved the hiring of a recodification editor and a contract attorney to do the work. Senator Kenley stated that he would like to bring the issue of resuming the recodification projects to the Legislative Council. He asked staff to communicate that desire on behalf of the Commission to the Legislative Council.

The Commission discussed possible titles in need of recodification. Titles discussed were Titles 4, 5, and 32. Representative Kuzman recommended that the Code Revision Commission recommend to the Legislative Council that the Legislative Council reinstitute the recodification project and that they start with Title 32 (property). The Commission agreed. In addition, Senator Kenley said if the Legislative Council agrees, the Office of Code Revision should immediately notify the State Bar Association of the project.

IV. REVIEW OF MINUTES

The Commission approved by consent the minutes of the Commission's last meeting on August 4 1999.

V. REVIEW OF PROPOSED TECHNICAL CORRECTIONS BILL

Senator Kenley explained to the new members that the purpose of the technical corrections bill is to make technical corrections to the Indiana Code to correct errors in legislation passed by the General Assembly. He stated that one goal in the preparation of a technical corrections bill is to avoid making substantive changes in the law.

Mr. Craig Mortell, Deputy Director, Office of Code Revision, presented the contents of **Preliminary Draft 3183**, the proposed technical corrections bill, which is attached to the minutes as Appendix B. He distributed a section-by-section summary of the preliminary draft, which is attached to the minutes as Appendix A.

Mr. Mortell characterized the changes contained in the technical corrections bill as falling into two categories: (1) corrections of obvious errors, including such things as the correction of misspelled words, supplying missing conjunctions, and the correction of erroneous internal references; and (2) corrections of errors that may not be obvious and that require a more detailed explanation. Mr. Mortell stated that with respect to the latter category, he had contacted interested parties affected by the corrections.

After briefly giving the Commission examples of corrections of obvious errors, Mr. Mortell proceeded to explain changes to certain provisions that required a more detailed explanation. Mr. Mortell presented, or the Commission specifically discussed, the following **SECTIONS of PD 3183**:

SECTION 4: Pages 3-4: Mr. Mortell explained that the use of the word "county" in a provision in IC 5-3-1-3(a) requiring a city or town to publish the compensation paid to county employees appeared to be in error and that it seemed the reference should instead be to "city or town". (See Appendix B for detailed explanation). He stated that he had contacted Tanya Galbraith,

Indiana Association of Cities and Towns, who agreed that the language should be corrected as proposed. However, Mr. Mortell reported that Mr. David Shaeffer, Clerk-Treasurer of the Town of Munster, had contacted him and expressed concern about the proposed change.

Ms. Jody Woods, General Counsel of Indiana Association of Cities and Towns, said she thought the word "county" was an obvious error but that some folks might view the correction as a substantive change.

Mr. Steve Key, Hoosier State Press Association, said he understood that there was an error in the language at the time it passed.

Senator Kenley felt comfortable with making the correction, and the Commission agreed. However, Senator Kenley instructed staff to check with Senator Lawson and Senator Skillman about the intent of the language. Mr. Stieff said they would be sure to bring this SECTION to the attention of the House and Senate Committees reviewing the legislation during the session.

SECTION 9: Page 11, line 18: The Commission thought the wording of the proposed change ("the officer's or authority's authority") was a little awkward and so decided to change the language to "under authority of the officer or police authority".

SECTIONS 11- 17 AND 19-21: Mr. Mortell explained that when Title 13 was recodified, a decision was made by the Code Revision Commission to put all the definitions at the beginning of the title, instead of interspersing them throughout the title. Wendy Hofspiegel, Indiana Department of Environmental Management, brought to the Office of Code Revision's attention that fact that some legislation recently adopted by the General Assembly did not follow that format. Mr. Mortell explained that the changes contained in these SECTIONS moved all the definitions to IC 13-11-2, the chapter that was intended to contain all of Title 13's definitions. Representative Kuzman expressed concern that no substantive change should result from moving the definitions and asked staff to double check to make sure that this was the case. He explained that the definitions were part of a controversial piece of legislation. Mr. Mortell assured the Commission that the Office of Code Revision (OCR) would double check these provisions.

SECTION 24. Mr. Mortell explained that IC 14-22-12-1 was a conflict section (one amended differently by two different bills) that the 2000 technical corrections bill attempted to fix. However, in the attempt to resolve the conflict, some language was inadvertently omitted. Mr. Mortell said that he had contacted Gary Doxtater, Director of the Division of Fish and Wildlife of the Department of Natural Resources, about the error. Mr. Doxtater informed Mr. Mortell that the error had not yet caused a problem because Indiana has not yet had a fall turkey hunt. Mr. Stieff added that the error was OCR's fault and the proposed fix was technical in nature; it merely added back in language that should not have been omitted in the first place.

SECTION 30: Mr. Mortell brought this SECTION concerning cigarette-related offenses to the attention of the Commission because the need for correction is not obvious on its face. Senator Kenley questioned whether the proposed change altered the penalty. After some discussion, the Commission agreed that the proposed fix was correct and technical in nature. Mr. Stieff added that OCR's decision on whether to include this SECTION in the draft was a "close call", and that OCR would be sure to bring all four cigarette-related sections affected by the draft to the attention of the House and Senate Committees reviewing the technical corrections bill during the session.

SECTIONS 33 & 34: Mr. Mortell explained that these SECTIONS corrected certain cross-references in recognition of the replacement of the old Uniform Commercial Code (UCC) secured transactions chapter (IC 26-1-9) with the new UCC secured transactions chapter (IC 26-1-9.1). Mr. Mortell expressed appreciation for the assistance of Professor Kathleen Patchel, who reviewed the provisions of the draft relating to the UCC.

SECTION 37: Senator Kenley inquired about the inclusion in the draft of this SECTION, which lists certain fees to be collected by the clerks of court. Mr. Mortell explained that the proposed change was not adding a new requirement, but merely updating the list. Mr. Mortell said that he had brought the matter to the attention of Mr. Kyle Conrad, the president of the court clerks' association, who had no problem with the correction but asked that the effective date of the correction be delayed until 1/1/2002 to give counties time to publish new traffic schedules. Senator Kenley did not want to delay the correction.

Representative Kuzman questioned the amount of the court costs listed on page 46, line 11, of the draft. He said this amount differed from the amount he was required to pay. Mr. Mortell pointed out that the fee language was existing law. Representative Kuzman asked staff to find out the correct amount and advise him accordingly.

Ms. Baker noted that some of the items on the list included a statutory cross-reference. Mr. Mortell said that in recent years, the staff had been adding a statutory cross-reference for the convenience of the reader. Senator Kenley asked staff to include a cross-reference for everything in current law on the list, if one could be clearly identified.

SECTIONS 39-43: Mr. Shockley inquired about the placement within the SECTION of the proposed language. He thought the changes should be on page 52, line 39, in SECTION 42, and on page 53, line 23, in SECTION 43. Senator Kenley asked staff to review those two SECTIONS to determine the proper placement within the SECTIONS of the proposed changes.

SECTION 53: Mr. Mortell explained that this SECTION repeals sections of the Indiana Code that have expired. Even though they have expired, there was nothing authorizing OCR to delete these SECTIONS from publication of the Indiana Code, absent the repealer.

In addition, Mr. Mortell distributed **PD 3239** (attached as Appendix C) for the Commission's consideration. He explained that this draft contained an item that was brought to staff's attention by Steven Johnson of the Prosecuting Attorneys Council after PD 3183 was prepared. A detailed explanation of the proposed change is attached as Appendix D. Mr. Stieff added that it would be fine with OCR if the Commission decided to "punt" on this issue. He said that Mr. Mortell's proposed solution was correct, but that the reader must do some hard mental work to understand it. Representative Kuzman thought the Prosecuting Attorneys Council should ask for this change in a separate bill; he did not think the proposed change should be included as part of the technical corrections bill. The Commission instructed staff to not include the proposed change in the technical corrections bill and to instead forward the request to the Criminal Law Study Commission and notify Steve Johnson of this decision.

Finally, the Commission approved PD 3183, subject to conditional changes discussed by the Commission at the meeting. The Commission agreed to include a statement in the digest that the bill was prepared by the Code Revision Commission. It was agreed that the bill would be introduced in the House, with Representative Kuzman as its author.

VI. UPDATE ON OFFICE OF CODE REVISION OPERATIONS

Mr. John Stieff, Director, Office of Code Revision, gave a brief overview of the work of the Office of Code Revision. He announced that the office had relocated this spring to One North Capitol, Suites 420 and 325.

Mr. Stieff said the relative slimness of the technical corrections bill this year was partially due to the success of the in-house printing operation. Mr. Stieff described the substantial savings to the taxpayers resulting from the agency's in-house printing operations, explaining that all bills are now printed in-house by the Office of Code Revision's Legislative Printing Office during the session. This, he said, resulted in a savings of \$170,000 for the 2000 session, and will result in an estimated savings of \$383,000 for the 2001 session. Mr. Stieff told the Commission of plans to print in-house the Acts of Indiana, at a savings of \$11,000 (or 21%) for the 2001 Acts of Indiana.

Mr. Stieff reported that the Office of Code Revision has been busy this summer rebidding the contract for the publication of the Indiana Administrative Code. Mr. Stieff reported in addition that his staff was in the process of creating a new in-house merge program, which would merge a bill and an amendment to the bill into a single document, thus creating a new version of the bill. He said that this merge program will allow OCR to proofread the printed bills through the use of word comparison technology, and that he sees the potential for the merge program to tremendously speed up the process of editing of amendments and committee reports.

VII. OTHER BUSINESS

Mr. Stieff reported that Senate Bill 90 from the 2000 session, which was authored by Senator Kenley, passed the Senate but died in the House. Mr. Stieff wondered if the Commission was interested in pursuing this bill again in the 2001 session. This bill would permit LSA to distribute the enrolled acts by providing CD-ROMS or floppy disks containing the text of the enrolled acts instead of hard copies of the enrolled acts. Mr. Stieff explained that the Indiana Constitution provides that, in the absence of an emergency clause, a bill can not take effect until the bills have been delivered to the clerks of each county. Mr. Stieff reported that a survey done by the Office of Code Revision two years ago showed that approximately 50% of the clerks had CD-ROM or floppy disk capacity. Mr. Stieff said that OCR would ask the clerks whether they would like to receive the enrolled acts in hard copy or on CD-ROM or floppy disk. Senator Kenley asked that it be written into the bill that the decision whether to receive a CD-ROM, a floppy disk, or a hard copy would be made by the clerk.

Mr. Remondini asked whether distribution of the enrolled acts by distribution of CD-ROMS instead of hard copies offends the publication clause of the Constitution. Mr. Stieff responded that he did not believe so; that the Constitution does not speak to the format of the Acts. Senator Kenley wondered whether more research was needed into this issue. After some discussion, the Commission decided to introduce the bill again this year, but to amend it to make it optional with the clerk whether the clerk is to receive a hard copy or a CD-ROM or floppy disk version of the enrolled acts. Finally, Senator Kenley asked Mr. Stieff to prepare a memo for him and Representative Kuzman, detailing: (1) the savings to be derived from distributing the enrolled acts on CD-ROM or floppy disk; and (2) the savings derived by printing the various publications, including the Indiana Administrative Code and the Indiana Register, in-house. In addition, they asked staff to give a copy of this memo to the Legislative Council.

VIII. ADJOURNMENT

The Chairman thanked the Commission members and staff for their work on the Commission. The meeting was then adjourned by the Chairman at 11:20 a.m.

